(Stephen J. Patsfall 0012271)
Attorney for Defendant Condon

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RONALD MELTON, et al.,	:	**Case No. C-1-01-528**
	:	**(Spiegel, J.)**
Plaintiffs,	:	
	:	
v.	:	**DEFENDANT THOMAS CONDON'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO CONSOLIDATE AND JOIN CLASS ACTION PROCEEDINGS**
	:	
BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO, et al.,	:	
	:	
Defendants.	:	

Defendant Thomas Condon hereby respectfully requests this court to deny the plaintiffs' Motion to Consolidate and Join Class Action Proceedings, or in the alternative, delay its decision until it rules on Defendant Condon's Motion for Summary Judgment.

Federal Rule of Civil Procedure 42(a) permits consolidation "[w]hen actions involving a common question of law or fact are pending before the court." See 9 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2382. This Court previously has found that the Plaintiffs in this case have claims independent of the claims in Chesher, et. al. v. Tom Neyer, Jr., et al, C-1-01-566 (See doc. #63). The Melton claims are unique and uncommon to the claims in Chesher, and consolidation should be denied.

On October 24, 2002, Plaintiffs opposed a motion to consolidate. (See doc. #48). The Plaintiffs' Memorandum gave reasons why Plaintiffs should not be "disadvantaged" by consolidation, which would "impede justice for them." Plaintiffs stated that Chesher involved more claimants with different interests seeking different relief than the Plaintiffs. Dr. Tobias's depositions have shown even greater differences. This case centers around a single photograph not taken by or used by Defendant Condon. As shown in Defendant Condon's Motion for Summary Judgment recently filed, he should not be a party to Melton.

The interest of judicial economy would not be served by consolidation at this time. Motions for summary judgment already have been filed, and a trial date and scheduling order are set. Consolidation now would cause this action to be prolonged, rather than proceed expeditiously, especially given that Plaintiffs' motion to consolidate was filed only ten days before the close of discovery in this case. Once rulings are made on the dispositive motions, the question of whether Plaintiffs should join the class action may be moot. If the dispositive motions do not end this matter, this case is set for trial July 6, 2004. Chesher has no discovery cutoff date, motion date or trial date.

Plaintiffs argued in October 2002 that they would be disadvantaged by consolidation because they would have to be brought up to date on the extensive discovery that occurred in the other actions. Since 2002, the discovery in Chesher has increased tremendously. Including Plaintiffs in Chesher now would impede progress of both Chesher and Melton while Plaintiffs were brought up to date on the voluminous amount of pleadings in Chesher.

Finally, since Defendant Condon has filed a Motion for Summary Judgment in this case, as have other defendants, consolidating the cases while the summary judgment motions remain pending would circumvent judicial economy. Accordingly, Defendant Condon respectfully requests that the Court deny Plaintiffs' Motion to Consolidate or in the alternative delay its ruling until it has ruled on the motions for summary judgment.

Respectfully submitted,

s/Stephen J. Patsfall

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of February, 2004 the foregoing was filed electronically with the Clerk of Court using the CM/ECFF system which will send notification to the following: David W. Kapor, Esq., and Michael B. Ganson, Esq., **Attorneys for Plaintiffs,** Lawrence E. Barbiere, Esq., **Attorney for Defendant Parrott,** Glenn V. Whitaker, Esq., **Attorney for Defendant Tobias,** Louis F. Gilligan, Esq. and Jamie M. Ramsey, Esq., **Attorneys for Hamilton County,**

s/Stephen J. Patsfall
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